

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER LYNN CRAWFORD,

Plaintiff/Counter-Defendant-
Appellee,

v

WAYNE LAMONT CRAWFORD,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED

May 16, 2006

No. 259108

Ottawa Circuit Court

LC No. 04-048500-DO

Before: Meter, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant appeals by right from a judgment of divorce. We affirm.

Defendant first contends that an extramarital relationship may cause the breakdown of a marital relationship and affect the distribution of property in a divorce proceeding even if the relationship is nonsexual. We agree.

Whether a nonsexual extramarital relationship can cause the breakdown of a marriage and affect the equitable distribution of property presents a question of law this Court reviews de novo. See *Pickering v Pickering*, 268 Mich App 1, 7; 706 NW2d 835 (2005). The evidence establishes that plaintiff engaged in an intimate, yet nonsexual, extramarital relationship with a former client during her marriage to defendant. The nature of the relationship was evidenced by plaintiff's testimony that she had daily contact with the individual, that she considered him a confidant with whom she communicated her marital problems, that she discussed personal issues, including marriage, divorce, and children with him, that she never told defendant she met the individual at bars to play pool, and that she filed for divorce within days after the man's wife discovered him and plaintiff kissing outside a bar. Thus, even if the relationship between plaintiff and the individual was not physically consummated before plaintiff filed for divorce, the evidence clearly shows that plaintiff was emotionally and intimately involved with him before she filed for divorce and, therefore, the evidence amply supports the conclusion that plaintiff's extramarital relationship was a primary reason for the divorce.

Defendant argues, however, that the trial court erred in failing to consider the extramarital relationship in fashioning the property settlement. It is well settled that fault is one of several factors for the court to consider in distributing property in a divorce proceeding.

Sparks v Sparks, 440 Mich 141, 158; 485 NW2d 893 (1992). However, as this Court recognized in *Hanaway v Hanaway*, 208 Mich App 278, 297; 527 NW2d 792 (1995):

The relative value to be given the fault element in a particular case and the extent to which particular actions are regarded as fault contributing to the breakdown of a marriage are issues calling for a subjective response; such matters are left to the trial court's discretion subject to the requirement that the distribution not be inequitable.

“The goal of a court when apportioning a marital estate is to equitably divide it in light of all the circumstances.” *Reed v Reed*, 265 Mich App 131, 152; 693 NW2d 825 (2005).

Defendant contends that plaintiff received a larger portion of the marital assets and, that the property distribution was not equitable in light of the circumstances. We disagree.

In reviewing a dispositional ruling, this Court must first review the trial court's findings of fact for clear error. If the findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. The ruling will be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sparks, supra* at 151-152.

Contrary to defendant's assertions, the trial court's findings that defendant's \$20,500 inheritance and defendant's 401(k) account were subject to distribution were not clearly erroneous. If a married party receives an inheritance but keeps the inheritance separate during the marriage, the court must exclude the property from the marital estate unless the court specifically determines that the other party “contributed to the acquisition, improvement, or accumulation of the property,” MCL 552.401, or that an award is “insufficient for the suitable support and maintenance” of the other party, MCL 552.23(1). *Deyo v Deyo*, 474 Mich 952; 707 NW2d 952 (2005); *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d 82 (1999). See, also, *Reeves v Reeves*, 226 Mich App 490, 494-495; 575 NW2d 1 (1997). But here, because defendant failed to keep his inheritance separate during the marriage, the trial court's finding that the inheritance was a marital asset subject to distribution was not clearly erroneous. Further, retirement accounts and pensions are considered part of the marital estate subject to award upon divorce. *Magee v Magee*, 218 Mich App 158, 164-165; 553 NW2d 363 (1996); *Pickering, supra* at 7-8. Thus, defendant's 401(k) account was subject to distribution.

The division of property need not be mathematically equal, but must be equitable. *McDougal v McDougal*, 451 Mich 80, 88; 545 NW2d 357 (1996). In dividing the property, the court must consider the following factors if they are relevant to the circumstances of the particular case: (1) the duration of the marriage; (2) contributions of the parties to the marital estate; (3) age of the parties; (4) health of the parties; (5) life status of the parties; (6) necessities and circumstances of the parties; (7) earning abilities of the parties; (8) past relations and conduct of the parties; and (9) general principles of equity. *Sparks, supra* at 159-160.

Defendant's main contention is that the property distribution is inequitable because in fashioning the property distribution, the trial court failed to consider that plaintiff was at fault in causing the divorce. First, we note that defendant's contention that plaintiff received a greater share of the marital assets is without merit because the trial court awarded 39 percent of the

marital assets to plaintiff and 61 percent to defendant. Second, we reject defendant's contention that the property distribution is inequitable because the trial court failed to consider plaintiff's fault. Fault is only one of the relevant factors in the distribution of property. *Id.* at 158. And, "a judge's role is to achieve equity, not to 'punish' one of the parties." *Sands v Sands*, 442 Mich 30, 36-37; 497 NW2d 493 (1993).

We also reject plaintiff's contention that trial court failed to adequately compensate him for the sacrifices and contributions he made in helping plaintiff attain her law degree. The attainment of an advanced degree may be considered when determining an equitable division of marital property upon divorce. *Postema v Postema*, 189 Mich App 89, 97-98; 471 NW2d 912 (1991). If one spouse earns an advanced degree while the parties are married and the degree was the end product of a concerted family effort involving mutual sacrifice and effort by both spouses, the spouse who did not earn the advanced degree is entitled to compensation when the parties divorce. *Id.* at 101. Thus, the court should attempt to return to the nonstudent spouse the financial value of what that spouse contributed toward attainment of the degree. *Id.* at 95.

The trial court found that defendant made significant contributions and sacrifices so that plaintiff could attend law school and that defendant made such sacrifices because he desired an early retirement. Thus, in fashioning the property distribution, the court awarded defendant his entire 401(k) account and awarded plaintiff her entire 401(k) account. And, as a result, defendant received approximately \$29,000 as compensation for the contributions and sacrifices he made in helping plaintiff achieve her law degree. Thus, we conclude that the award was sufficient to at least return to defendant the value of what he contributed financially toward attainment of the degree.

Thus, because defendant received a larger share of the marital assets than plaintiff and because we are not left with a firm conviction that the property distribution was inequitable, we hold that the property distribution was fair and equitable under all the circumstances of the case.

Defendant also contends that in failing to award spousal support, the court failed to consider relevant factors such as: (1) plaintiff's fault; (2) the sacrifices defendant made in helping plaintiff attain her law degree; (3) defendant is limited to working in a factory due to his lack of professional degrees; (4) plaintiff received a greater share of the marital assets in the property distribution; (5) the disparity in the parties' earning abilities; (6) unlike plaintiff who is cohabitating and sharing expenses with her paramour, defendant has no one to share expenses with; (7) defendant needs to purchase a new vehicle; and (8) defendant looked forward to being able to maintain the higher standard of living the parties achieved after plaintiff's student loans were paid off. We disagree.

A trial court's decision regarding spousal support is reviewed for an abuse of discretion. *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003). Because we leave undisturbed the court's factual findings, the only question before us is whether the dispositional ruling was fair and equitable in light of the facts. *Id.* at 433. "The trial court's decision regarding alimony must be affirmed unless the appellate court is firmly convinced that it was inequitable." *Olson v Olson*, 256 Mich App 619, 630; 671 NW2d 64 (2003).

The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Id.* at 631. In determining whether to award alimony, the

court applies a multi-factor analysis similar to that used in dividing marital property distribution. *Id.*; *Hanaway*, *supra* at 295.

We hold that the trial court's decision not to award spousal support to defendant was fair and equitable under the circumstances. Neither the length of the parties' marriage nor the parties' prior standard of living supports an award of spousal support. Compare *Hanaway*, *supra* at 296. Further, although defendant earns less income than plaintiff, defendant has the ability to earn an income comparable to that of many college graduates and he is capable of supporting himself. Furthermore, although defendant contends on appeal that his income has decreased, that he needs money to purchase a new vehicle and that plaintiff has the ability to pay alimony because she is cohabitating and sharing expenses with her paramour, these assertions were not substantiated at trial and do not support an award of spousal support. Finally, defendant received a greater share of the marital assets and failed to produce evidence concerning his need for spousal support. Thus, we are not firmly convinced that the trial court's decision not to award spousal support was inequitable. Rather, we conclude that the trial court's decision was fair and equitable under the circumstances.

Finally, we decline to award attorney fees to defendant. Attorney fees are not recoverable as of right in a divorce action. *Reed*, *supra* at 164. Because defendant failed to allege facts sufficient to show that he is unable to bear the expense of the action and that plaintiff is able to pay, as required by MCR 3.206(C)(2)(a), an award of attorney fees is inappropriate.

We affirm.

/s/ Patrick M. Meter
/s/ Joel P. Hoekstra
/s/ Jane E. Markey